

### **REMARKS**

The response, which is filed in response to the Office Action mailed June 9, 2008, is believed to fully address all and each issue raised in the Action. A favorable reconsideration of the application is respectfully requested.

Upon entry of the accompanying amendment, which is respectfully requested, claims 5, 6 and 8-13 are all the pending claims. Claims 5 and 6 are amended in order to improve wordings and to more clearly set forth the claimed feature of the invention. Claims 8 and 9 are amended to more clearly set forth the claimed subject matter. Claim 13 is newly added. Support for new claim 13 may be found by, for example the disclosure at page 6, lines 1-10 and page 15, lines 1-4 of the specification. No new matter is introduced.

Applicants thank the Examiner for accepting the drawings filed September 7, 2005.

Applicants further thank the Examiner for acknowledging the claim for foreign priority and the receipt of the certified copy of the priority documents from the International Bureau.

#### **Response to Specification Objection**

In the Office Action, the Abstract of the disclosure is objected to on the ground that it is too long.

In response, the Abstract is amended in order to be in compliance with the rules. Thus, the amendment renders the objection moot and its withdrawal is respectfully requested.

#### **Response to Rejections Under 35 U.S.C. § 112**

In the Office Action, claims 7-9 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In particular, the phrases "more excellent, rich taste, mild taste, smooth texture on tongue," "hardness at distribution," "long term," and "low temperature" are pointed out to be indefinite.

Claims 7-9 are amended to address the rejections. Applicants believe the rejections are not sustainable and respectfully request it be withdrawn.

### **Response to Rejections Under 35 U.S.C. § 103**

In the Office Action, claims 5-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Castberg *et al.* (US 5,453,286<sup>1</sup>; "R1" reference) in view of Kamiya (EP 1 082 907; "R2" reference).

R1 is relied upon to disclose a method of converting pasteurized milk into fermented milk in which the pasteurized milk is carbonated with carbon dioxide and inoculated with starter culture. The Office asserts that R1 discloses that while the conventional yoghurt process employs 43 °C as the incubation temperature, an incubation temperature of 30 °C may be employed.

The Office also asserts that R1 discloses the advantage of the invention as shortening the fermentation time necessary (e.g., using 1200 ppm of carbon dioxide stimulates the starter culture and as a result the incubation time is reduced by 20%).

However, the Office admits that R1 is silent regarding the specific range of the dissolved oxygen concentration and the use of an inert gas to reduce the dissolved oxygen concentration.

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<sup>1</sup> The Office Action contains a typographical error in indicating the number of patent. The number "US 5,453,256" should read "US 5,453,286."

R2 is relied upon to teach using nitrogen to reduce the dissolved oxygen in milk. The Office asserts that R2 teaches that in milk, the dissolved oxygen is about 10 ppm and in order to reduce it to about 2 ppm, one needs to add 40-50%, by volume, of nitrogen gas to the amount of milk and R2 discloses that reducing the dissolved oxygen in milk will reduce smell and improve taste and smoothness.

It is noted that the Office contends that the parameters such as penetration angle and hardness are absolutely unusual in the art and obviously could be replaced by other more meaningful parameters for the determination of gel strength. The Office alleges that, given that R1 in combination with R2 disclose method as presently claimed, it is clear that such method would intrinsically result in fermented milk with penetration angle and hardness as presently claimed.

The Office argues that it would have been obvious to one of ordinary skill in the art to modify the teachings of R1 and adopt the teachings of R2 in using an inert gas to reduce the dissolved oxygen in the milk medium to accelerate the growth of the starter culture and hence reduce the incubation time as presently claimed. It is further asserted by the Office that, absent any evidence to contrary, based on the combined teachings of the cited references, there would be a reasonable expectation of success in making a fermented product using an inert gas.

Applicants respectfully disagree.

As the Office correctly admits, R1 does not teach the specific range of the dissolved oxygen content in a mix or the use of the inert gas. R1 clearly teaches that the carbon dioxide is used in the fermentation of milk. It was generally known by one skilled in the milk fermentation industry that carbon dioxide gives an influence on the growth of lactic acid bacteria

for unknown reasons. Furthermore, when carbon dioxide is used, pH of the culture medium or the fermented milk varies, which attributes various tastes and flavors.

Applicants respectfully submit that, for the above reasons, one skilled in the art would not have been motivated to combine R1 which teaches milk fermentation employing carbon dioxide with R2 which teaches a sterilization method of milk under the control of oxygen concentration using nitrogen gas.

In addition, Applicants respectfully submit that the products obtained by the claimed method exhibit unexpected and long-felt desired properties, which were not obtained by conventional methods. The products obtained by the claimed method has a hard property, and at the same time, it maintain a pudding-like state having a smooth surface without generating breakage of curd (texture) which usually is caused by vibrations during distribution. Also, the product has a smooth mouth feel when it is actually taken. Namely, the product has these contradicting properties, which could not obtained or predicted by R1 and R2, alone or in combination.

Accordingly, it is believed that the rejection is not sustainable and its withdrawal is respectfully requested.

### CONCLUSION

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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